STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAKEITH LEWIS,

Defendant-Appellant.

UNPUBLISHED
June 9, 1998

No. 182246
Oakland Circuit Court
LC No. 92-120628 FC

Before: Sawyer, P.J., and Kelly and Smolenski, JJ.

PER CURIAM.

Defendant was initially charged with delivery of more than 650 grams of cocaine, MCL 333.7401(2)(1)(i); MSA 14.15(7401)(2)(a)(i), and conspiracy to deliver more than 650 grams of cocaine, MCL 750.157a; MSA 28.354(1); MCL 333.7401(2)(1)(i); MSA 14.15(7401)(2)(a)(i). Following a jury trial, defendant was convicted of the lesser offense of conspiracy to deliver 225 to 650 grams of cocaine, MCL 750.157a; MSA 28.354(1); MCL 333.7401(2)(1)(ii); MSA 14.15(7401)(2)(a)(ii). He was sentenced to twenty to thirty years in prison. He now appeals and we affirm.

Many of defendant's arguments on appeal arise out of the fact that defendant was a juvenile when the conspiracy began, but was an adult by the time the conspiracy concluded and defendant was charged. We first consider whether the trial court erred in failing to instruct the jury that it could not consider defendant's conduct as a juvenile in deciding his guilt. The trial court based its ruling upon a conclusion that the automatic waiver statute, MCL 600.606; MSA 27A.606, did not become effective until after the conspiracy began. This issue was addressed in *In re Fultz*, 211 Mich App 299; 535 NW2d 590 (1995), rev'd on other grounds 453 Mich 937 (1996). In *Fultz*, this Court held that the automatic waiver statute could be applied retroactively to conduct that occurred before the effective date of the statute. Accordingly, the trial court correctly concluded that the waiver statute applied and, therefore, defendant could be tried as an adult, even for the portion of the offense which occurred when he was a juvenile. Therefore, the trial court did not err in refusing to give a limiting instruction to the jury.

Next, we consider defendant's argument that the statute he was indicted under, MCL 767.23; MSA 28.963, violates the Title-Object Clause of the Michigan Constitution, Const 1963, art 4, § 24, because the title refers to a requirement that twelve grand jurors must agree to indict, while the statute itself only requires the agreement of nine grand jurors. Defendant, however, confuses the caption to the statute in Michigan Compiled Laws Annotated with the title of the Code of Criminal Procedure. While it is true that there is an error in the caption in the MCLA version of the statute, the actual title contains no reference to the number of grand jurors who must agree, let alone that number differing from the statute.[1] Accordingly, defendant's argument is frivolous.

We next consider defendant's argument that the trial court erred by admitting defendant's juvenile records as evidence at trial. We disagree. The evidence at issue was not defendant's juvenile record. Rather, it was evidence that was gathered while defendant was a juvenile. As discussed above, defendant was properly prosecuted for an offense which began while he was a juvenile. Accordingly, there is nothing improper in utilizing information collected while defendant was a juvenile, even if some of that information may have previously been provided to the juvenile court in an earlier petition.

A similar issue was before the court in *United States v Spoone*, 741 F2d 680 (CA 4, 1984), where the defendant was charged with a conspiracy that began when he was a juvenile and ended after he became an adult. The court in *Spoone* held that evidence pertaining to activities in which the defendant engaged while still a juvenile was admissible in his trial as an adult. Although *Spoone* is not controlling in the case at bar, we are persuaded that its reasoning is also applicable here. In sum, the evidence may be used, even if it pertains to activities as a juvenile, only the juvenile court records cannot.

Finally, defendant argues that he was denied a fair trial by virtue of the prosecutor's improper comments during rebuttal argument. We disagree. Defendant objected at trial to the comments of which he now complains. The trial court gave a curative instruction. Defendant did not object to the curative instruction, nor did he request any additional instruction. Accordingly, we conclude that the matter was adequately addressed in the trial court.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Michael R. Smolenski

[1] We additionally note that the caption in the Michigan Statutes Annotated is correct.